

AMENDED IN ASSEMBLY APRIL 17, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2146

Introduced by Assembly Member Canciamilla *Members
Canciamilla and Harman*

February 21, 2006

An act to add Section 221 to the Fish and Game Code, relating to fish and game.

LEGISLATIVE COUNSEL'S DIGEST

AB 2146, as amended, Canciamilla. Hunting or fishing: local regulation.

The California Constitution provides for the delegation to the Fish and Game ~~of~~ Commission *of* powers relating to the protection and propagation of fish and game. Existing statutory law delegates to the commission the power to regulate the taking or possession of birds, mammals, fish, amphibia, and reptiles in accordance with prescribed laws. Under existing law, the Department of Fish and Game exercises various functions with regard to the taking of fish and game. Under existing law, a city or county exercises certain limited authority with regard to the regulation of fish and game for the protection of public health and safety.

This bill would require the Department of Fish and Game, upon request of the commission, to review city and county ordinances that impact *the* otherwise legal ~~hunting or fishing activities~~ *taking of fish and game* and to identify each ordinance that it determines is unconstitutional or in conflict with state law. The bill would require the department to submit those determinations in writing to the commission and the city or county that approved the ordinance. The

bill, *on and after January 1, 2007*, would prohibit a city or county from adopting an ordinance within its jurisdiction that impacts ~~the otherwise legal hunting or fishing activities~~ *taking of fish and game* unless the ordinance is necessary and narrowly tailored to protect public health and safety and has only an incidental effect, *as defined*, upon the regulation of ~~hunting and fishing~~ *fish and game reserved to the department and the commission by existing law*. If an ordinance proposed by a city or county does not meet these requirements, the bill would authorize a city or county, upon consultation with the department, to petition the commission to adopt a regulation concerning the matter set forth in the proposed ordinance.

The bill would establish a process for commission review of, and recommendations regarding, a proposed action by a state or local agency that would significantly impede public access to navigable waters held in public trust by the state, and thereby impact public hunting or fishing rights.

The bill would require the State Lands Commission, before entering into a lease or other agreement with another state or local agency that would impact public hunting or fishing rights on navigable waters held in public trust by the state, to consult with the department and obtain the approval of the commission by a majority vote of its members.

The bill would require the commission, when considering proposed regulations or agreements that would impact public hunting or fishing rights on navigable waters held in public trust by the state, to ensure that the regulations or agreements, if ultimately approved, are consistent with specified law.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 221 is added to the Fish and Game
- 2 Code, to read:
- 3 221. (a) The Legislature finds and declares both of the
- 4 following:
- 5 (1) The California Supreme Court in *In re Makings* (1927) 200
- 6 Cal. 474, determined that Section 25 ½ of Article IV of the
- 7 California Constitution, as currently set forth in Section 20 of
- 8 Article IV, ~~with certain exceptions~~, prohibits local governmental

1 entities from regulating, or interfering with, the taking of fish and
2 game and places this responsibility with the Legislature.

3 (2) The Fish and Game Commission was established in 1870
4 to assist in the management of California's fish and wildlife
5 resources. The California Constitution permits the Legislature to
6 delegate to the commission certain powers relating to the
7 management of fish and game, and the Legislature has delegated
8 to the commission regulatory powers over hunting and fishing, as
9 set forth in the Fish and Game Code.

10 (b) In enacting this section, it is the intent of the Legislature to
11 affirm, subject to applicable federal law, the legal authority
12 granted to the commission and the Legislature with regard to the
13 taking of fish and game.

14 (c) Upon the request of the commission, the department shall
15 review city and county ordinances that impact ~~otherwise legal~~
16 ~~hunting or fishing activities~~ *the otherwise legal taking of fish and*
17 *game* and shall identify each ordinance that it determines is
18 unconstitutional or otherwise in conflict with state law. The
19 department shall submit those determinations in writing to the
20 commission and the city or county that approved the ordinance.

21 (d) ~~A~~ *On and after January 1, 2007, a city or a county shall*
22 *not adopt an ordinance within its jurisdiction that impacts*
23 ~~otherwise legal hunting or fishing activities~~ *the otherwise legal*
24 *taking of fish and game*, unless both of the following apply:

25 (1) The ordinance is necessary and narrowly tailored to protect
26 public health and safety.

27 (2) The ordinance has only an incidental effect upon the
28 regulation of ~~hunting and fishing~~ *fish and game reserved to the*
29 *commission or the department by the California Constitution or*
30 *state law*.

31 (e) If the ordinance proposed by a city or county does not meet
32 the requirements of subdivision (d), a city or a county, upon
33 consultation with the department, may petition the commission to
34 adopt a regulation concerning the matter set forth in the proposed
35 ordinance.

36 (f) *Within 120 days before taking an action that would*
37 *significantly impede public access to navigable waters held in*
38 *public trust by the state, and thereby impact public hunting or*
39 *fishing rights, a local or state agency shall consult with the*
40 *department and notify the commission in writing of its proposed*

1 action. Within 60 days of that notification, the commission shall
2 hold at least one public meeting regarding the proposed action,
3 as near as possible, in the discretion of the commission, to the
4 general location in which the proposed action would take effect.
5 Any recommendations approved by the commission regarding the
6 proposed action shall be forwarded in writing to the agency
7 within 30 days of the date of the meeting for the consideration of
8 the public agency.

9 (g) Before entering into a lease or other agreement with
10 another state or local agency that would impact public hunting
11 or fishing rights on navigable waters held in public trust by the
12 state, the State Lands Commission shall consult with the
13 department and obtain the approval of the commission by a
14 majority vote of its members. Before reaching its determination,
15 the commission shall hold at least one public meeting regarding
16 the proposed agreement as near as possible, in the discretion of
17 the commission, to the general location in which the proposed
18 agreement would take effect.

19 (h) When considering proposed regulations or agreements
20 under this section that would impact public hunting or fishing
21 rights on navigable waters held in public trust by the state, the
22 commission shall ensure that the regulations or agreements, if
23 ultimately approved, are consistent with Section 25 of Article I
24 and Section 4 of Article X of the California Constitution.

25 (i) For purposes of this section, “incidental effect” means that
26 the ordinance is not intended to impact, and has an insignificant
27 effect, or no effect, upon the regulation of fish and game.